

## EASTERN BAND OF CHEROKEE INDIANS.

APRIL 5, 1878.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. MORGAN, from the Committee on Indian Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 228.]

*The Committee on Indian Affairs, to whom was referred the bill (H. R. 228) to enable the Eastern Band of the Cherokee Indians to institute and prosecute a suit in the Court of Claims against the Cherokee Nation, respectfully submit the following report:*

It appears that this bill provides for a settlement of a long-standing controversy between what are known as the Eastern Band of Cherokee Indians—being those now residing east of the Mississippi River—and the Western Cherokees, or Cherokee Nation, in which controversy the Eastern Band claim a pro-rata share of moneys derived from sale of lands and other tribal or national property belonging to the whole Cherokee people.

This claim is based upon the treaty between the United States and the Cherokee tribe, or nation, of Indians, concluded December 29, 1835, and the agreement made and executed on the 26th of May, 1836, by and between the representatives of that portion of the Cherokees who decided to go west of the Mississippi River and that portion who desired to remain east of said river, and which agreement was for the purpose of explaining the true intent and meaning of the said treaty of 1835 as to the rights of those Cherokees who desired to remain east of the Mississippi, and also upon the treaty between the United States and the Cherokee Nation, proclaimed May 23, 1846, supplemental and explanatory of the treaty of 1835, in reference to the subject-matter now in controversy between Eastern and Western Cherokees.

The question at issue between Eastern and Western Cherokees, as to whether the Eastern Cherokees are entitled to a pro rata share of all benefits accruing from the treaty of 1835 without removal to the West, being a condition-precedent to sharing such benefits, has at different times been submitted to the proper officers of the government for opinion. In 1845, Attorney-General John Y. Mason, and again in 1851, Attorney-General J. J. Crittenden, gave opinions upon this question, both of whom sustained the claim set up by the Eastern Cherokees, that they were entitled to all the benefits accruing from the treaty of 1835 as other Cherokees, without removal to the West. The same opinion has been expressed by other officers of the government to whom the subject has been referred for examination and report since the treaty of 1835; the first opinion thereon being given by the Secretary of War in July, 1836 (the Indian bureau then being under control of the War Department), and the last by the Commissioner of Indian Affairs, E. P. Smith, in December, 1875.

The Eastern Band of Cherokees have determined to remain where they now reside, in North Carolina and other States east of the Mississippi, and the Western Cherokees—Cherokee Nation—having sold a large quantity of the land west of the Mississippi which belonged, in the language of the treaty, to the "whole Cherokee people," they (the Eastern Cherokees) now desire to avail themselves of their pro-rata share of the money received from said sales, which claim is controverted by the Western Cherokees, or Cherokee Nation.

Without going into a minute examination of the subject-matter involved in this controversy, the committee are of the opinion that a definite and final settlement of the issue should be had at an early day, and which can better be done by a court of competent jurisdiction, wherein a deliberate and searching investigation can be made in the case, such as cannot well be done by Congress in its hurry and pressure of business.

The claimants are authorized to employ, by contract, attorneys to prosecute said claim in the Court of Claims, which contract must be approved by the chief justice of said court. The Secretary of the Interior being the custodian of the funds of the Cherokee Nation, is to be made a party defendant in the case. It is also provided that the incidental expenses of said suit, other than attorney fees, not to exceed the sum of \$10,000, shall be paid from time to time by the Secretary of the Interior out of any funds in his hands or under his control belonging to said Eastern Band of Cherokees.

The committee therefore report back the accompanying bill giving the Court of Claims jurisdiction to hear and determine said case, and recommend its passage.